

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference P2638PC00/BAEOF	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/05449	International filing date (day/month/year) 21.05.2003	Priority date (day/month/year) 07.06.2002
International Patent Classification (IPC) or both national classification and IPC A23C9/154		
Applicant CAMPINA B.V.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

 These annexes consist of a total of 2 sheets.

3. This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 20.10.2003	Date of completion of this report 14.09.2004
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Desmedt, G Telephone No. +31 70 340-2441 

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/EP 03/05449**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-17 as originally filed

Claims, Numbers

1-13 received on 08.06.2004 with letter of 08.06.2004

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/EP 03/05449**

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	2,10,11
	No: Claims	1,3-9,12-13
Inventive step (IS)	Yes: Claims	
	No: Claims	1-13
Industrial applicability (IA)	Yes: Claims	1-13
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1) Reference is made to the following documents:

D3: JP46042189 from FSTA 74-4-01-p0106 and WPI 1971-78572s

D6: EP0649599

2) The term "and the emulsifier, based on the total weight content thereof" in claim 1 is not considered to be clear (Article 6) and has been disregarded in the assessment of novelty and inventive step.

3) The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1, 3-9 and 12-13 is not new in the sense of Article 33(2) PCT.

3a) The document ^{D6}~~D1~~ discloses (see examples 1-2 and page 2 lines 30-32) an aerated dessert made by blending 2 parts starch, 7.5% sugar and 0.62% stabiliser composition containing 65% lactic acid ester of mono- and diglycerides of fatty acids, 20% of guar gum and 15% of carrageenan in 89.5 parts of 3% fat milk followed by pasteurisation, homogenisation and aerating.

The fatty acids of the mono- and diglycerides are oleic or palmitic acid.

Furthermore lactic acid esters of mono-and diglycerides of oleic acid are considered to belong to the group of mono-and diglyceride glycerol esters of unsaturated fatty acids.

Hence claims 1 and 3-8 are considered to be known from D6.

3b) Document D3 (see FSTA and WPI abstracts) describes a powdered mixture obtained by adding 15-20% glycerol saturated fatty acid monoester and 10-16% of glycerol unsaturated fatty acid monoester to milk fat or oils, further adding a drying assistant agent such as defatted milk, sodium caseinate and a polysaccharide, followed by spray drying. An adhesion agent and a sweetener can be added to the dried mixture. Hence claims 9, 12 and 13 are considered to be known from D3.

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/EP 03/05449

4) Dependent claims 3 and 10-11 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step as in these claims a slight change in the compositions of claim 1 resp. claim 9 is defined which comes within the scope of the customary practice followed by the persons skilled in the art, especially as the advantages can readily be foreseen.